PT 97-49
Tax Type: PROPERTY TAX
Issue: Religious Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

LUTHERAN CHILD AND FAMILY SERVICES, APPLICANT	)	**Docket No: 93-22-461**
v.	)	**Real Estate Exemption for Part of 1993 Tax Year**
DEPARTMENT OF REVENUE STATE OF ILLINOIS	)	**P.I.N.: 03-20-419-004**
	)	**Alan I. Marcus, Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. Eric D. Anderson appeared on behalf of Lutheran Child and Family Services; Mr. Robert Rybica, Assistant State's Attorney for the County of Du Page, appeared on behalf of the Du Page County Board of Review.
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SYNOPSIS: This proceeding raises the limited issue of whether that portion of Du Page County Parcel Index Number 03-20-419-004 commonly known as the "Chapman House" should be exempt from real estate taxes for 33% of the 1993 assessment year[1] on grounds that it was "actually and exclusively used for charitable or beneficent purposes..." within the meaning of 35 **ILCS** 205/19.7.[2] In relevant part, that provision exempts the following from real estate taxation:

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1. The gist of applicant's brief (especially page 4 thereof) is that exempt use began on September 1, 1993. As such, I shall limit the scope of this Recommendation to that 33% of 1993 which began on September 1, 1993 and ended December 31, 1993.

[2]. In People ex rel Bracher v. Salvation Army, 305 Ill. 545 (1922), the Illinois Supreme Court held that the issue of property tax exemption will depend on the statutory provisions in force at the time for which the exemption is claimed. This applicant seeks exemption from 1993 real estate taxes. Therefore, the applicable statutory provisions are those contained in the Revenue Act of 1939 (35 **ILCS** 205/1 *et seq*).

> All property of institutions of public charity, all property of beneficent and charitable organizations, whether incorporated in this or any other state of the United States ... when such property is actually and exclusively used for such charitable or beneficent purposes and not leased or otherwise used with a view to profit ...[.]

The controversy arises as follows:

On December 27, 1993, Lutheran Child and Family Services of Illinois (hereinafter the "applicant") filed an Application for Property Tax Exemption with the Du Page County Board of Review. (hereinafter the "Board"). Said application alleged that the entirety of DuPage County Parcel Index Number 03-20-419-004 was exempt from 1993 real estate taxes under the applicable version of Section 205/19.7. (Dept. Ex. No. 1).

The Board subsequently reviewed the application and recommended to the Illinois Department of Revenue (hereinafter the "Department") that the entire parcel be granted a full year's exemption. (*Id*.). On December 7, 1995, the Department partially accepted this recommendation by issuing a certificate exempting all portions of the subject parcel except for Chapman House and the land beneath, both of which it found to be in non-exempt use. (Dept. Ex. No. 2).

Applicant later filed a timely appeal to this partial denial (Dept. Ex. No. 3) and thereafter presented evidence at a formal administrative hearing that took place on October 23, 1996. Following submission of all evidence and a careful review of the record, it is recommended that the Department's determination as to Chapman House be modified to reflect that only the following certain portions thereof (together with an appropriate amount of underlying ground) be exempt from real estate tax for 33% of the 1993 assessment year: the entirety of unit D; the entirety of the west garage and 1/3 of the east garage.

FINDINGS OF FACT:

1. The Department's jurisdiction over this matter and its position therein, namely that Chapman House and its underlying ground were not in exempt use throughout 1993, are established by the admission into evidence of Dept. Group Ex. No. 1 and Dept. Ex. No. 2.

2. Applicant was founded in 1873. Its original purpose was to provide care, guidance and love to orphans in the Chicagoland area. Applicant Ex. No. 3.

3. Applicant did not submit its original Articles of Incorporation. However, it filed Amendments to said Articles on June 6, 1974. These amendments, filed pursuant to the General Not For Profit Corporation Act of Illinois, indicate that applicant is organized for the following purposes:

> A. To receive and care for orphaned, dependent, neglected, delinquent and other handicapped children and rear them in the admonition of the Lord according to the teachings of the Word of G-D;
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> B. To give encouragement to families to maintain or rehabilitate their homes, and to discourage the removal of children from their families, excepting for compelling reasons, recognizing the values of kinship and the Church;
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> C. To provide institutional service where it is needed;
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> D. To provide foster family care, housekeeper service or any other type of facility, care and service which is deemed best for such children;
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> E. To provide or to obtain maintenance, medical care, general and special education, including manual training and the industrial arts, religious training, recreation, vocational guidance, and moral, intellectual, aesthetic and physical culture; to provide or obtain competent psychological, psychiatric and social services; to assist the children in securing suitable employment leading to self support and independence, and to fit them for useful Christian citizenship;
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> F. To provide, when deemed advisable, for the adoption of such children by proper persons; and,
>
> G. To participate in and carry on any and all other general social services of a charitable and philanthropic nature.

Applicant Ex. No. 6; Tr. p. 15, 19.

4. Applicant provides the above services at various locations throughout the State of Illinois. It operates approximately 40 service centers statewide but owns only six of the properties wherein these service centers are located. Tr. pp. 17 - 18.

5. With the exception of Chapman House, all of the six properties applicant owns are exempt from real estate taxes. Tr. p. 18.

6. Chapman House is part of a larger (46,000 square feet) complex commonly known as the Lutherbrook Campus that is located at 343 West Lake Street, Addison, Illinois. Applicant assumed ownership of this complex, which is situated on Du Page County Parcel Index Number 03-20-419-004, (hereinafter the "subject parcel") via a warrantee deed dated September 1, 1973. Applicant Ex. Nos. 1 & 9; Tr. pp. 12 - 13.

7. The complex is improved with the following structures: Lutherbrook Children's Center, a residential treatment facility; Collins Group Home; the White House, a residence for pregnant women who are being serviced by applicant's adoption unit; the Seegers Center, a four-wing office complex which applicant uses to provide family counseling and other services; and the Chapman House. Tr. pp. 10 - 11, 24 - 25, 35.

8. Chapman House itself consists of a one-story building that occupies 3,546 square feet. The building features two 884-square foot garages, one located at the east end of the building, the other located at the west end of same. It also contains two small one-bedroom apartments,[3] five small studio apartments,[4] and a 368-square foot boiler room. Applicant Ex. No. 7; Tr.p. 35.

9. All of the apartments, as well as the boiler room, are located in between the two garages. *Id*.

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[3]. The bedrooms in these apartments measure 299 square feet, while the living rooms occupy 368 square feet.

[4]. Each apartment was approximately 368 square feet.

10. From January 1, 1993 until September 1, 1993, applicant used all but one of the apartments for rental housing. Most, if not all, of its tenants were staff personnel or childcare workers who elected to live at the complex while employed at the Lutherbrook Campus. Tr. pp. 20 - 21.

11. Applicant did not require any of the tenants to live in the apartments or otherwise condition their employment on campus residency. *Id*.

12. Applicant terminated the residential uses of Chapman House on September 1, 1993. It did so as part of an initiative to expand services. Although it eventually concluded that the cost of converting Chapman House to a service-oriented facility was too great, applicant nonetheless included Chapman House in its initiative by using it for storage. Tr. p. 30.

13. Applicant began storing items in Chapman House immediately after terminating its residential use. Photographs, at least four of which are date stamped September 13, 1995, disclose that applicant stored the following items in various sections of Chapman house:

> A. Bicycles, a sofa, a door, a tractor and other landscaping equipment in the west garage;
>
> B. Bicycles, a gardening hose, a folding chair, a bag of charcoal and other materials used at Collins Group Home in the east garage;
>
> C. A bedboard, a large box with unspecified contents and other furniture in apartment A;
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> D. A sofa and at least one chair in apartment B;
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> E. A mattress, a credenza, a tall chest of draws and other furniture in apartment C;
>
> F. Bicycles in Apartment D;
>
> G. Boxes and other containers containing unspecified items (except that one open box is clearly marked "Cream of Wheat") in apartment E.

App. Ex. No. 8; Tr. pp. 15, 36.

14. Photographs further indicate that the laundry/boiler room contained a washing machine, a dryer, two bicycles, clothes hangers, two fire extinguishers,

a fuse box, a furnace, a hot water heater, piping and other related equipment. *Id.*

15. Applicant did not submit photographs establishing the contents of apartments F and G.

16. While all of the stored items were applicant's property, it obtained "a lot" of the furniture as donations from Wickes Furniture Company. It used unspecified amount of this furniture to refurbish the living areas at Lutherbrook or Collins Group Home. However, applicant also distributed other pieces of furniture to its building in southern Illinois and other inter-agency facilities that were not located at the Lutherbrook Campus. Tr. p. 14, 35-36, 38 - 40.

17. Applicant also used part of the east garage to store items it received as donations but resold at the Nice Twice Resale Shop. Tr. p. 36.

18. Applicant operates the Nice Twice Resale Shop, which is located away from the Lutherbrook campus in Riverside, Illinois. Tr. pp. 36, 45-46.

19. Applicant submitted no evidence as to whether the thrift store was tax exempt during 1993.

20. Applicant used the landscaping equipment to service the Lutherbrook campus. It also allowed children staying at the Lutherbrook Children's Center to use the bicycles it stored in Chapman house. Tr. pp. 35, 40, 43.

21. Applicant continued using Chapman House for the above-detailed storage purposes throughout the balance of the 1993 assessment year. Tr. p. 38.

CONCLUSIONS OF LAW:

An examination of the record establishes that this applicant has demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting portions of Chapman House from real estate taxes for 33% of the 1993 assessment year. Accordingly, under the reasoning given below, the Department's findings that Chapman House and its underlying ground were not in exempt use throughout 1993 should be modified. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

> The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The power of the General Assembly granted by the Illinois Constitution operates as a limit on the power of the General Assembly to exempt property from taxation. The General Assembly may not broaden or enlarge the tax exemptions permitted by the Constitution or grant exemptions other than those authorized by the Constitution. Board of Certified Safety Professionals, Inc. v. Johnson, 112 Ill.2d 542 (1986). Furthermore, Article IX, Section 6 is not a self-executing provision. Rather, it merely grants authority to the General Assembly to confer tax exemptions within the limitations imposed by the Constitution. Locust Grove Cemetery Association of Philo, Illinois v. Rose, 16 Ill.2d 132 (1959). Moreover, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App.3d 497 (1st Dist. 1983).

Pursuant to its Constitutional mandate, the General Assembly enacted the Revenue Act of 1939, 35 **ILCS** 205/1 *et seq*. The provisions of that statute which govern disposition of the present matter are found in 35 **ILCS** 205/19.7. In relevant part, that provision states as follows:

> All property of institutions of public charity, all property of beneficent and charitable organizations, whether incorporated in this or any other state of the United States [is exempt from real estate taxation] ... when such property is actually and exclusively used for such charitable or beneficent purposes and not leased or otherwise used with a view to profit ...[.]

It is well established in Illinois that a statute exempting property from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. People Ex Rel. Nordland

v. the Association of the Winnebego Home for the Aged, 40 Ill.2d 91 (1968) (hereinafter "Nordlund"); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Based on these rules of construction, Illinois courts have placed the burden of proof on the party seeking exemption, and have required such party to prove, by clear and convincing evidence, that it falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App. 3d 678 (4th Dist. 1994).

Here, the appropriate exemption pertains to "institutions of public charity." Illinois courts have long refused to apply this exemption absent suitable evidence that the property in question is owned by an "institution of public charity" and "exclusively used" for purposes which qualify as "charitable" within the meaning of Illinois law. Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156 (1968).

In this case, administrative notice of the Department's determination dated December 7, 1995 establishes that this applicant is an "institution of public charity" within the meaning of Section 205/19.7.[5] Said determination further establishes that all portions of the subject parcel, except for Chapman House and its underlying ground, were in exempt use throughout the 1993 assessment year.

Neither the applicant nor the Board have challenged these findings in the present proceeding. Therefore, I shall leave same undisturbed and limit any remaining analysis to the issue of whether Chapman house and its underlying ground were in exempt use during any portion of the 1993 assessment year.

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[5]. For further information as to this applicant's exempt status, *see*, Lutheran Child and Family Services of Illinois, Departmental Docket No. 93-84-115. (Springfield parcel purchased by applicant on September 17, 1993 held exempt for part of 1993 assessment year on grounds that it was being developed for appropriate purposes as of the date of purchase). *See also*, discussion of Lutheran Child and Family Services of Illinois v. Department of Revenue, 160 Ill. App.3d 420 (2nd Dist. 1987), infra at pp. 9-10.

Analysis of that topic begins with administrative notice of Lutheran Child and Family Services of Illinois v. Department of Revenue, 160 Ill. App.3d 420 (2nd Dist. 1987). There, the court held that portions of the Lutherbrook Center, including Chapman House, were not in exempt use during the unspecified tax year in question.

The Lutheran court began its analysis by noting that "the Department [had previously determined] that the garage portion, which constitutes 10% of [Chapman House], was exempt." Lutheran at 422. The court left that determination, which was not on appeal, undisturbed and proceeded to analyze whether the remaining portions of Chapman House were exempt. It based this analysis on the criteria established in Benedictine Sisters of the Sacred Heart v. Department of Revenue, 155 Ill. App.3d 325 (2nd Dist. 1987), wherein the court held that caretaker and other similiar buildings are not exempt unless applicant establishes one of two conditions: first, that the resident-employee performs an exempt function, such as educational or religious duties, and is required by those same exempt duties to live in the residence; or, second, that the resident-employee performs his duties in furtherance of the institution's exempt purpose in the building. *See also*, Cantigny Trust v. Department of Revenue, 171 Ill. App. 3d 1082 (2nd Dist. 1988); Girl Scouts of DuPage County Council, Inc. v. Department of Revenue, 189 Ill. App.3d 858 (1989).

The Lutheran court held that Chapman House did not satisfy the above criteria for two reasons: first, those who lived there were not required to do so "by any formal rule[;]" and second, that "no educational activities [were] performed there." Lutheran Child and Family Services, *supra* at 426.

These criteria bar exemption for that portion of 1993 wherein applicant used Chapman House for residential purposes. However, "a determination of exempt or taxable status for one year is not res judicata for any other tax year even where ownership and use remain the same." Jackson Park Yacht Club v. Department of Local Government Affairs, 93 Ill. App.3d 542 (1st Dist. 1981). Therefore,

neither these criteria nor that portion of the Lutheran holding pertaining to Chapman House bar exemption as to that 33% of the 1993 assessment year[6] wherein applicant used same for storage.

In Evangelical Hospitals Corporation v. Department of Revenue, 233 Ill. App.3d 225 (2nd Dist. 1991), (hereinafter "EHC") the court analyzed whether a leasehold interest, held by appellant's non-exempt for-profit affiliate, satisfied the exempt use requirements set forth in the applicable version of Section 200/15-65. The leasehold covered approximately 18,000 square feet and was divided into the following uses: first, an area used to provide management to four of appellant's hospitals; second, a pharmacy; third, various physician offices and high tech medical centers; and fourth, an area used for purposes related to joint ventures undertaken by the lessee and various physicians.

The court held in favor of exemption. However, it limited the exemption to those portions of the subject property which were actually used to provide management and administrative services to the appellant. According to the court, only these portions had been proven to be "reasonably necessary" for appellant's efficient administration. EHC, *supra* at 574. The remainder were found not to be in exempt use based on various failures of proof. *Id*. at 574 - 575. *See also*,

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[6]. *See*, 35 **ILCS** 205/27a, the relevant portion of which states as follows:

> The purchaser of property on January 1 shall be considered the owner [who is therefore liable for any taxes due] on that day. Provided, however, that whenever a fee simple title or lesser interest in property is purchased, granted, taken or otherwise transferred for a use exempt from taxation under this Act, such property shall be exempt from taxes from the date of the right of posession, payment or deposit of the award therefor. Whenever a fee simple title or lesser interest in property is purchased, granted taken or otherwise transferred from a use exempt from taxation under this Act to a use not so exempt, such property shall be subject to taxation from the date of the purchase or conveyance.

35 **ILCS** 205/27a.

Memorial Child Care v. Department of Revenue, 238 Ill. App.3d 985 (4th Dist. 1992), (hereinafter "MCM") (appellant's child care center held tax exempt based on finding that subject property was "reasonably necessary" to further the exempt purposes of appellant's exempt affiliate, Memorial Medical Center). MCM at 991 - 993.

The instant record is factually similiar to EHC in that it establishes that some portions of Chapman House were used to store bicycles and other materials that were "reasonably necessary" to further the exempt operations of the Lutherbrook campus. However, like EHC, the record also contains numerous evidentiary deficiencies which prohibit the conclusion that the entire facility was in exempt use during 33% of the 1993 assessment year.

The primary use of real estate, rather than its incidental use or uses, determines tax exempt status. Illinois Institute of Technology v. Skinner, 49 Ill.2d 59 (1971), (hereinafter "IIT"). This elementary principle provides a general framework for the remaining analysis. However, our courts have recognized that it can be subject to variable applications in the following "distinct situations[:]"

> First is the case where the property as a whole, or in unidentifiable portions is used both for an exempting purpose and a non-exempting purpose. The property will be wholly exempt only if the former use is primary and the latter is merely incidental. [citations ommitted]. In the second situation, an identifiable portion of the property may be exempt, while the remainder is taxable if it is a substantial rather than incidental portion of the property and is used for a non-exempting purpose or not at all. [citations ommitted].

IIT at 66.

The IIT court applied these principles to a record which established that only a portion of the 107-acre tract under consideration was actually used for exempt educational purposes. It exempted that specific portion and held that "[w]here a tract is used for two purposes, there is nothing novel in exempting

the part used for an exempt purpose and subjecting the remainder to taxation." *Id.* at 64.

This case is somewhat dissimilar to IIT in that the use in question involves storage rather than actual exempt activity, such as classroom instruction. The former is inherently more susceptible to mixed use in that some or all of the items stored could not have (or, as is true in the present case, might not be proven to have) any connection to the actual exempt activity. Therefore, the area wherein applicant stores these items may not be exempt *merely* because applicant uses it for storage.

Unlike classroom instruction, storage is also more open to changing uses in that the applicant could store different items (some of which might not further exempt activity) in the storage area during different tax years or parts thereof. For this and all the aforementioned reasons, it is particularly important to examine all of the evidence pertaining to use and determine whether applicant has in fact proven that Chapman House was *primarily* used for exempt purposes.

Based on certain mixed uses and associated failures of proof detailed below, I conclude that applicant has failed to sustain that burden. Thus, it seems logical to employ IIT's partial exemption analysis to determine whether any distinctly identifiable portion (or portions) of Chapman House was (were) "reasonably necessary" to facilitate exempt activity subsequent to August 31, 1993.

Applicant stored furniture in apartments A, B and C after this date. Although applicant used some of this furniture to refurbish the Collins Group Home, is also distributed other unspecified amounts of same to its building in southern Illinois and other inter-agency facilities that were not located on the Lutherbrook Campus.

Applicant did not identify which specific items of stored furniture it used to refurbish the Collins Group Home. Nor did it submit any evidence (i.e. exemption certificates) specifically establishing that the facilities not located

on the Lutherbrook Campus, including the one in southern Illinois, were tax exempt. Absent such evidence, I am unable to discern whether the items stored in apartments A, B and C were primarily used at Lutherbrook or otherwise primarily used to facilitate appropriate activity at other tax-exempt facilities.[7] Therefore, these units fail to qualify for exemption under the "reasonably necessary" standard articulated in EHC.

Applicant also did not submit any evidence establishing the contents of apartments F and G. It additionally failed to specifically demonstrate how the boxes and containers stored in apartment E furthered exempt activity at Lutherbrook. Hence both the above reasoning and the rules cited *supra* at p. 8 mandate that applicant has failed to sustain its burden of proof as to these units. For this and all the above stated reasons, I conclude that apartments A, B, C, E, F and G and their underlying ground should not be exempt from real estate taxes for 33% of the 1993 assessment year.

The above analysis does not address the exempt status of apartment D, the garages or the boiler room. With respect to apartment D, both the photographs (applicant Ex. No. 8) and the testimony of applicant's administrative services manager, Jeffrey Schultz, establish that the bicycles stored therein were used by children residing at Lutherbrook during 1993. (Tr. pp. 35 - 38).

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[7]. In connection with this conclusion, I would note that the testimony of applicant's director of facilities management, Charles Ayres, establishes that applicant operated approximately 40 service facilities in the State of Illinois. (Tr. pp. 17-18). Said testimony further establishes that applicant owns the properties which house six of these facilities and that all six of same are tax exempt. However, neither this testimony nor any other evidence of record establishes the precise identity of these tax-exempt facilities.

The record is also devoid of evidence proving what, if any, exempt status attached to the remaining 34 service facilities. Without this evidence, and considering that the six exempt properties constitute only 15% of the total number of service facilities, it seems highly probable that some of the stored furniture could be used at non-exempt facilities. Therefore, it is equally likely that this furniture would neither facilitate nor be used in connection with exempt activity as required by EHC, *supra*.

The residential nature of the programs administered at Lutherbrook provide a nexus with the exempt therapeutic activities conducted therein. As such, any activities associated with residential programs, including bicycle riding, would necessarily facilitate exempt activity. Hence, it appears that the space wherein applicant stored these bicycles would qualify for exemption under EHC. Therefore, both apartment D and its underlying ground should be exempt from real estate taxes for 33% of the 1993 assessment year.

A similiar rationale applies to the garages. Photographs establish that applicant stored bicycles, landscaping equipment and other paraphernalia used at Lutherbrook in the west garage. Applicant did not use this equipment at any location except Lutherbrook. Furthermore, all of the equipment served grounds keeping and other functions that were "reasonably necessary" to Lutherbrook's exempt operations. Therefore, the area used to store same should receive an appropriate exemption from real estate taxes.

Exemption of the east garage depends on somewhat different considerations. This portion of Chapman House was used to store bicycles, a garden hose and other materials stored at Collins Group Home. However, it was also used to store items that were resold at applicant's thrift shop.

This thrift shop is not located at Lutherbrook. Moreover, applicant submitted no evidence establishing the thrift shop's exempt status. Consequently, I am unable to ascertain whether the area used to store items sold at this facility were "reasonably necessary" to facilitate exempt activity. However, photographs do disclose that the east garage is divided into three separate parking areas and that one of them contains only bicycles and gardening equipment. Accordingly, pursuant to the above rationale, and the holdings in EHC, *supra* and IIT, *supra*, I conclude that 1/3 of the east garage (and its underlying ground) should be exempt from real estate taxes for 33% of the 1993 assessment year.

The evidence pertaining to the boiler room fails to disclose any connection to exempt activity. Specifically, applicant did not introduce any evidence indicating that the items contained therein, (including a washing machine, a dryer and other mechanical equipment), were used by Lutherbrook residents or its employees in a manner that would facilitate exempt activity. Without such evidence, and considering the likelihood that applicant's election to terminate residential use as of September 1, 1993 left much (if not all) of this equipment unused, I must conclude that applicant has failed to prove that the contents of the boiler room were in actual, exempt use after that date.

In summary, applicant has failed to prove that most of the individual units in Chapman house and its boiler room were in actual, exempt use after August 31, 1993. It has nonetheless has proven that unit D, all of the west garage and 1/3 of the east garage were "reasonably necessary" to effectuate exempt activity at Lutherbrook during that time. Accordingly, that portion of the Department's determination pertaining to Units A, B, C, E, F and G, as well as the boiler room and 2/3 of the east garage, (together with the appropriate amount of underlying ground) should be affirmed. However, that portion of the determination pertaining to unit D, all of the west garage and 1/3 of the east garage (concurrently with the appropriate amount of underlying ground should be reversed to reflect an exemption for 33% of the 1993 assessment year.

WHEREFORE, for all the above-stated reasons, it is my recommendation that the Department's determination as to Chapman House and its underlying ground be modified as set forth above.

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Date

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Alan I. Marcus,
Administrative Law Judge